

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DOC NO
REC'D/FILED

2019 DEC 23 AM 10:23

UNITED STATES OF AMERICA

INFORMATION

PETER OPPEHEER
CLERK US DIST COURT
WD OF WI

v.

Case No.

19

M

147

SLC

18 U.S.C. § 371

JAMES KITZMAN

Defendant.

THE UNITED STATES ATTORNEY CHARGES:

COUNT 1

Background

1. At times material to this information:

(a) Defendant JAMES KITZMAN was a master falconer licensed in Wisconsin. He also was a raptor propagator. According to USFWS records, he possessed a raptor propagation permit.

(b) The federal Migratory Bird Treaty Act (MBTA) prohibited any person from taking, possessing, purchasing, bartering, selling, or offering to purchase, barter, or sell, among other things, migratory birds unless the activities are allowed by federal permit. 16 U.S.C. § 703(a). Federal regulations required falconers to have a valid falconry permit from the State in which they reside in order to take, possess, or transport migratory birds (i.e. raptors) from the wild to use in falconry activities. 50 CFR 21.29(c)(1). Federal regulations also required raptor propagators to have a Federal raptor propagation permit to, among other things, take from the wild and possess

raptors for use in propagation activities. 50 CFR 21.30(a)(1)(ii). Northern goshawks are considered migratory birds and are covered under the MBTA. 50 CFR § 10.13.

(c) Under the MBTA and federal falconry regulations, a permitted falconer could take raptors from the wild and train them, and use them to hunt small game. 50 CFR § 21.29(a)(1)(i). Permitted falconers could transfer these wild birds to other permitted falconers or raptor propagators as a “gift.” However, under no circumstances could a permitted falconer purchase, sell, trade, or barter a raptor that was taken from the wild. 50 CFR § 21.29(f)(4)(ii).

(d) Under the federal falconry regulations, a general or master falconer could take no more than two raptors from the wild each year to use in falconry. 50 CFR § 21.29(e)(2).

(e) Under the federal falconry regulations, a general or master falconer could remove nestlings from a nest in accordance with tribal, State, territorial, and Federal restrictions. 50 CFR 21.29(e)(2)(ii).

(f) Wisconsin falconry regulations stated that no more than two eyasses (nestlings) could be taken by the same general or master falconer permittee during the specified season. WI Administrative Code NR 18.12(3)(a). In addition, Wisconsin falconry regulations stated no person could possess a northern goshawk taken from the wild or acquired from a rehabilitator unless it is marked and banded immediately upon possession. WI Administrative Code NR 18.12(3)(d)1.

(g) Under the MBTA and federal raptor propagation regulations, a permitted raptor propagator could breed migratory birds taken from the wild, and sell their offspring as captive-bred raptors to other propagators or falconers. 50 CFR § 21.30(b) and 50 CFR § 21.30(g)(1). However, under no circumstances could a permitted raptor propagator purchase, sell, or barter a raptor that was taken from the wild. 50 CFR § 21.30(g)(3).

(h) Federal and State law required holders of state falconry permits and federal raptor propagator permits to complete a Form 3-186A (USFWS Migratory Bird Acquisition and Disposition Report), any time they transfer, acquire, release, lose, or reband a raptor under their permit. 50 CFR § 21.29(e)(6)(i), 50 CFR § 21.30 (h)(2). Wisconsin falconry regulations specifically required falconers to report the band number placed on a northern goshawk taken from the wild within 10 days from the day the goshawk was taken from the wild. WI Administrative Code NR 18.12(d)3.

(i) The Lacey Act, among other things, made it unlawful for a person to transport, sell, receive, acquire, or purchase any fish or wildlife, which has been taken, possessed, transported, or sold in violation of any law or regulation of the United States. 16 U.S.C. § 3372(a)(1). The Lacey Act also made it unlawful for any person to transport, sell, receive, acquire or purchase in interstate or foreign commerce any fish or wildlife taken, possessed, transported or sold, in violation of any law or regulation of any State. 16 U.S.C. § 3372(a)(2)(A). For Lacey Act purposes, the term “taken” meant captured, killed, or collected. 16 U.S.C. § 3371(j)(1)

Conspiracy

2. From on or about December 22, 2016, to on about August 9, 2017, in the Western District and elsewhere, the defendant,

JAMES KITZMAN,

knowingly and intentionally conspired with Edward Taylor and other persons both known and unknown to the grand jury, to knowingly, transport, receive, and acquire a northern goshawk nestling in interstate and foreign commerce, and to cover up said transport, receipt and acquisition, when in the exercise of due care, the defendant should have known said northern goshawk nestling was taken, possessed, and transported in violation of the Migratory Bird Treaty Act (16 U.S.C. § 703(a)), federal falconry regulations (50 C.F.R. § 21.29), and Wisconsin falconry regulations (WI Administrative Code NR 18.12), all in violation of the Lacey Act, 16 U.S.C. §§ 3372(a)(1) and 3373(d)(2).

Manner and Means

The manner and means by which the conspiracy was sought to be accomplished included, among other things, the following:

3. It was part of the conspiracy that KITZMAN, along with S.C, B.C. and D.K., took two male northern goshawk nestlings from a nest located on the Chequamegon-Nicolet National Forest ("CNNF") in Price County, Wisconsin on May 26, 2017. S.C. and B.C. kept and banded one of the male northern goshawk nestlings with band #RO124198. KITZMAN kept and banded the other male northern goshawk

nestling with band #RO122196. Coconspirator Edward Taylor was not present for this taking.

4. It was further part of the conspiracy that later that same day, S.C., B.C., D.K., and KITZMAN, took two more northern goshawk nestlings (a male and a female) from a nest located on state land in Vilas County, Wisconsin, which is located in the Western District of Wisconsin. KITZMAN kept both of the northern goshawk nestlings for himself. KITZMAN banded the male northern goshawk nestling with band #RO122197. KITZMAN did not band the female northern goshawk. Coconspirator Edward Taylor was not present for this taking.

5. It was further part of the conspiracy that KITZMAN gave the female northern goshawk nestling that was taken on May 26, 2017 from the nest located on state land in Vilas County, Wisconsin, to coconspirator Edward Taylor, who travelled from his home in Fruitport, Michigan on May 27, 2017, and met with KITZMAN at his home in Oak Creek, Wisconsin, to pick up the female northern goshawk nestling. Coconspirator Edward Taylor took possession of the female northern goshawk nestling and transported it back to his home in Michigan on May 28, 2017.

6. It was further part of the conspiracy that after bringing the female northern goshawk nestling home, coconspirator Edward Taylor called B.C. and thanked him for climbing the tree and obtaining the female northern goshawk nestling from the Vilas County, Wisconsin nest on May 26, 2017. Coconspirator Edward Taylor offered to buy falconry equipment for B.C. as a thank you for climbing the nest, but B.C. declined. Coconspirator Edward Taylor ended up mailing B.C. a check dated May 29, 2017 for

\$100, payable to B.C. When B.C. received the check, he was upset with coconspirator Edward Taylor because “you’re not supposed to give people money for finding a wild bird.”

7. It was further part of the conspiracy that KITZMAN told B.C. that KITZMAN was giving the female northern goshawk nestling to coconspirator Edward Taylor because Taylor had previously given KITZMAN a captive-bred Finnish goshawk, and KITZMAN owed Taylor a bird.

8. It was further part of the conspiracy that after the taking of the female northern goshawk nestling on May 26, 2017, KITZMAN told S.C. and B.C. to “keep it hush-hush and not tell anybody” that KITZMAN was giving the female northern goshawk nestling to coconspirator Edward Taylor.

9. It was further part of the conspiracy that coconspirator KITZMAN filled out and submitted to the Wisconsin Department of Natural Resources (WDNR) two Form 3-186A Migratory Acquisition and Disposition Reports in 2017 regarding these two takes in May. The first report indicated that KITZMAN took a male northern goshawk nestling on 5-26-17 in Price County, Wisconsin and banded it with #RO122196. The second report indicated that KITZMAN took a male northern goshawk nestling on 5-27-17 in Vilas County, Wisconsin and banded it with #RO122197. KITZMAN signed both of these reports under the penalties of perjury. KITZMAN failed to submit a Form 3-186A indicating his taking of the female northern goshawk nestling in Vilas County, Wisconsin on 5-26-17 with S.C., B.C., and D.K.

10. It was further part of the conspiracy that KITZMAN instructed coconspirator Edward Taylor to fill out a false Form 3-186A Migratory Acquisition and Disposition Report regarding the taking of the female northern goshawk nestling in Vilas County, Wisconsin on May 26, 2017. While the two men were sitting at KITZMAN's kitchen table on May 27, 2017, Taylor filled out the Form 3-186A. KITZMAN told Taylor not to put KITZMAN's name on the form and to report that Taylor captured the female northern goshawk nestling in Vilas County, Wisconsin.

11. It was further part of the conspiracy that KITZMAN told coconspirator Edward Taylor to never mention to anyone, including the reporting agencies, that it was KITZMAN who had obtained the female northern goshawk nestling in Vilas County, and had given it to Taylor, after Taylor had given a captive-born Finnish goshawk to KITZMAN on December 22, 2016.

12. It was further part of the conspiracy that KITZMAN instructed coconspirator Edward Taylor to use a cover story if ever questioned about the capture of the female northern goshawk nestling on May 26, 2017 in Vilas County. The cover story was that Taylor went to KITZMAN's home to pick up KITZMAN's GPS device, which Taylor used to locate and capture the female northern goshawk nestling in Vilas County.

13. It was further part of the conspiracy that coconspirator Edward Taylor sent an email on May 28, 2017, at 9:19 p.m., to a Michigan Department of Natural Resources (MDNR) employee notifying the employee that Taylor had: *"just returned home from Wisconsin where I was able to locate and acquire an eyas Northern Goshawk from the*

wild, from there state. I obtained the proper permits from Wisconsin to make this acquisition. I will be sending you the acquisition and disposition report shortly. I used one of the federal markers that you sent me. # RO122577 This was placed on the goshawk at the time of capture. Thank You, Edward Taylor".

14. It was further part of the conspiracy that coconspirator Edward Taylor sent another email on May 31, 2017, at 11:19 a.m., to the MDNR employee saying, *"Hello Casey, This is my 3-186A form for the goshawk I acquired from Wisconsin. Let me know if it is clear enough for your records. If I need to make changes I will do so. Thank you, Ed Taylor"*. Coconspirator Edward Taylor attached to his email a Form 3-186A which indicated that Taylor took a female goshawk nestling in Vilas County, Wisconsin and banded it with #RO122577. Taylor signed the report under the penalties of perjury. He dated it 5-27-17.

15. It was further part of the conspiracy that coconspirator Edward Taylor sent another email on May 31, 2017, at 12:25 p.m., to the MDNR employee saying, *"Hi Casey, This is a follow up letter letting you know what I have in my possession at this time. 1 Northern Goshawk Female Acquired from Michael Acuff on August 10, 2015. Band number RW093374, 1 Northern Goshawk Female Band #RO122577 Acquired from wild 5/27/2017 (Wisconsin Raptor)"*. Coconspirator Edward Taylor included an updated Form 3-186A which indicated that he captured the wild female goshawk nestling in Vilas County, Wisconsin on May 27, 2017, and banded it with #RO122577. Coconspirator Edward Taylor signed the updated report under the penalties of perjury. He dated it 5-27-17.

16. It was further part of the conspiracy that KITZMAN submitted to the WDNR, a Form 1700-076 (Annual Falconry Report). This form listed that for the time

period of August 1, 2016 to July 31, 2017, KITZMAN acquired three goshawks, more specifically: (1) banded goshawk #RO122196 acquired on 5-26-17; (2) banded goshawk #RO122197 acquired on 5-27-17; and (3) banded goshawk #RX086094 acquired on 12-22-16, and disposed of on 6-12-17. KITZMAN failed to list the female goshawk nestling he acquired from the nest in Vilas County, Wisconsin on May 26, 2017, and gave to coconspirator Edward Taylor the next day. KITZMAN signed the form attesting that it was "complete, correct, and not misrepresented in any way." KITZMAN dated it August 9, 2017.

Overt Acts

In furtherance of the conspiracy, and to accomplish its objectives, the following overt acts were committed in the Western District of Wisconsin, and elsewhere:

17. On or about May 26, 2017, KITZMAN took two northern goshawk nestlings (a male and a female) from a nest located on State land in Vilas County, Wisconsin. KITZMAN banded the male northern goshawk nestling (#RO122197). KITZMAN did not band the female northern goshawk nestling. KITZMAN transported the two northern goshawk nestlings to his home in Oak Creek, Wisconsin.


18. On or about May 27, 2017, coconspirator Edward Taylor travelled from his home in Fruitport, Michigan to KITZMAN's home in Oak Creek, Wisconsin to pick up the female northern goshawk nestling.

19. On or about May 28, 2017, coconspirator Edward Taylor took possession of the female northern goshawk nestling and transported it from Wisconsin to his home in Michigan.

20. On or about May 28, 2017, KITZMAN instructed coconspirator Edward Taylor to fill out a false Form 3-186A Migratory Acquisition and Disposition Report regarding the taking of the female northern goshawk nestling in Vilas County, Wisconsin on May 26, 2017, while the two men were sitting at KITZMAN's kitchen table on May 27, 2017.

(All in violation of Title 18, United States Code, Section 371).

12/23/19
Date


SCOTT C. BLADER
United States Attorney